

## MEMORANDUM

TO: Jennifer Raitt  
Laura Weiner, AICP

FROM: Judi Barrett

RE: Arlington Zoning Review and Reorganization Framework

DATE: February 28, 2017

CC: Eric Halvorsen, Bob Mitchell

The purposes of this memo are to present comments on Arlington's Zoning Bylaw (ZBL) and provide a framework for recodification and reorganization.

### A. ZONING COMMENTS

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As the Town already knows, RKG provided an overview-level critique of the ZBL as part our work on the Arlington Master Plan. We will not repeat those comments here unless we think it is important to emphasize a particular point or reinforce comments we heard during the audit phase of our current contract with you. With this in mind, we offer the following additional comments.

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#### General Comments

- Throughout the ZBL, there are left-margin references to town meeting dates that need to be removed. The references are very confusing because they make it difficult to see transitions in section headings and subheadings and they disrupt the flow of the ZBL.
- The indentation of sections, subsections, and subordinate subsections is inconsistent. As a result, where sentences and paragraphs belong is not always clear.
- The ZBL contains many long, wordy paragraphs that should be divided into smaller paragraphs with short subheadings or (preferably) edited and condensed wherever possible.
- The ZBL contains many instances of imprecise and vague language and "legalese," all of which need to be cleaned up and edited to improve readability.
- Since the ZBL will be available online in PDF format, it should have hyperlinks to cross-reference internal sections and external content such as state laws.
- The existing illustrations need to be rethought, rewritten, redesigned etc. There are many opportunities for new illustrations as well.

## Table of Contents

- Several section numbers have an asterisk attached (they have that within the actual sections as well). We did not find any explanation for the asterisk.
- The Table of Contents numbering system is slightly off. For example, see 6.20a, 7.05a, 8.07a. This should be cleaned up in the recodification (the entire numbering system needs to be revised).

## Article 1. Title, Authority, and Purpose

- 1.02. Zoning is adopted under the authority of the Home Rule Amendment, not Chapter 40A.
- 1.03. Purpose. This is one example of a very long “Jamesian” paragraph. The first sentence consists of 177 words! It should be divided into subsections, bullet points, or similar format changes.

## Article 2. Definitions

- 2.01 Definitions; General Comments.
  - The entire section needs updating, editing, and clarifying and to be made consistent with the land use terms and other terms in the rest of the ZBL. Also, any illustrations located within the Definition section should appear next to the terms they are illustrating.
  - Some defined terms have asterisks attached. Again, we did not find any explanation of the asterisks.
- 2.01 Definitions; Specific Comments.
  - Restaurants. The same or similar topics and terms should be combined with others that start with the same letter. Example: the current definition section has Drive-in Fast Service Establishment, Fast-Order Food Establishment, and Restaurant. Define these as “Restaurant – Fast Food; Restaurant – Fast Order; Restaurant, etc.”
  - Hotel. The hotel definition is out-of-date for today’s hotel market and types of amenities often included (hotel suites with kitchens for example.)
  - Loading Space includes a waiver provision by the Building Inspector. This is an odd place for waiver language (it should be in the Off-Street Parking and Loading regulations).
  - Notice; this should be moved to the list of other sign types.
  - Open Space, Landscaped contains imprecise language. What “level” does this refer to: floor level, roof level, etc.?
  - Rehabilitation Residence. This is not the correct term for the use described – is it?
  - Special Permit should identify “the Board.”

### **Article 3. Establishment of Districts**

- General Comment. This is more than the scope of recodification, but the Town needs to examine the need for so many different districts.
- Sections 3.01 and 3.02 should include the Overlay Districts.

### **Article 4. Interpretation and Application**

This entire section should be incorporated into a larger Administration and Enforcement section.

### **Article 5. Use Regulations**

- 5.05. Home Occupation. The language here should be consistent with the language in the Home Occupation definition in Article 2.
- 5.04. Table of Uses. Generally, the format needs to be revised so the table will be easier to read and use. It needs horizontal lines, colors, font size differences, etc. The list of uses and the language used for some of those uses should be revised and updated, and terms listed in the Table of Uses should be consistent with use terms listed in the Definitions section.
- 5.04 Table of Uses needs another numbering system (if any) other than 1.01, 1.02, 2.01, etc., as these numbers are used throughout the ZBL as section numbers. In addition, the numbering system needs to be corrected to put numbers in sequential order, rather than, for example, 1.02 and 1.02a.
- 5.04, items 2.07 and 2.10 include uses that cannot be required to obtain a special permit. These items have to be rewritten to distinguish between non-profit religious and educational uses and other uses.
- 5.04, Agricultural, needs to be rewritten to conform to G.L. c. 40A, § 3.
- 5.04, item 4.06. United States is not subject to local zoning, so federal uses cannot be required to obtain a special permit.
- 5.04, item 4.08. Country, fishing, tennis, swimming, skating, golf club or other outdoor recreation facility not conducted as a private gainful business. What does "country" mean?
- 5.04, item 4.14. Is "Conservation Land" allowed only in the OS district?
- 5.04, item 5.01. Reference to "railroad station" is obsolete and can be removed.
- 5.04, item 5.09. In the Table of Uses, bikeways are only allowed in the OS district. However, the Minuteman Bikeway crosses multiple districts.
- 5.04, item 5.10. This use is not allowed in any district. Is the omission an error in the Table of Uses?
- 5.04, items 5.11a and 5.11b. We question the legality of allowing only public buildings to be used for wireless facilities in three districts.
- 5.04, item 5.11c. We are not clear what this section means.

- Items 6.07, 6.07a, 6.08, 6.08a, 6.09, 6.09a, 6.12-6.15, and 6.18 and 6.18a should be rewritten to be "cleaner" in language and format. (This problem exists throughout the Table of Uses.)
- Item 7.10 reads as if the Board of Health is granting the special permit.
- Item 8.02 appears to violate G.L. c. 40A, § 3.
- Item 8.07. Delete use of the male pronoun.
- Item 8.21. What is a "head end" site?
- Item 8.24 should be moved to the signs section of the ZBL.

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#### Article 6

- 6.01b. We have questions about how this could be enforced as well as its legality.
- 6.02. Is this section still required? Do local wetlands regulations and state regulations supersede?
- Table of Dimensional & Density Requirements, General Comment: this table should be restructured as to format for easier reading, etc.
- The Table and Sections 6.06, 6.08 thru 6.30. We have not spent a lot of time reviewing these sections because they need global editing. In general, though, there seems to be exceptions to exceptions to exceptions to the standards in the Table. The whole section is hard to follow on first (or second) glance.
- 6.08. This is the "famous" 750 sq. ft. addition provision. We heard lots of criticism of this section from interviewees. It needs to be rethought and probably rewritten, but it is more of a policy issue than anything else.
- 6.12d "... in accordance with the development plans and policies of the Town of Arlington". What would those plans and policies be? The language is extremely vague.
- 6.13 "height buffer." The diagram is not readable and does not seem to be understandable to people.
- 6.16. This section is for screening requirements. It should be in a Landscaping section of the ZBL, not in the Dimensional section.
- 6.18. Put this information in a well-formatted table.
- 6.18. The paragraph after the list of setbacks on page 73 includes a variety of topics. This should be disaggregated into subsections or bulleted points.
- 6.21. The diagram on page 75 refers to Section 6.21b, but we did not find a Section 6.21b
- 6.26 and Diagram. We find all of Section 6.26 difficult to follow and very confusing. We assume someone understands all the formulas for calculating height in this section. The diagram does not help.

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#### Article 7. Signs.

- General Comments. This section needs to be updated, including to reflect the *Reed v. Gilbert* case, adding a table of sign types and dimensional requirements, adding illustrations/photos. In addition, there are numerous references to “free-standing” signs, but we only found height limits for some of those references. What are all the height limits for any free-standing sign?
- 7.03j. This section violates the *Reed* ruling.
- 7.04g. This prohibits signs for home occupations, yet some of the home occupations allowed by the bylaw would need a sign (e.g., doctor’s office).
- 7.04i. Prohibits signs with registered trademarks. We do not understand this.
- 7.05a. This seems very unfriendly to a bed and breakfast, with no lighting allowed and a sign that cannot be located at the drive/sidewalk entrance.
- 7.07a. Why not allow bracket signs in other business districts, given the multiple zoning districts in the Massachusetts Avenue commercial corridor, and other local commercial areas? (We heard this as an issue in the interviews, too.)
- 7.08. Change the use of personal pronoun in paragraph at the bottom of page 86. The Director could be (and in fact is) a she and not a him (“his”).
- 7.10. The nonconforming sign limitations on rewording, repainting etc. (and then losing nonconforming status) is questionable. We will ask Bob Ritchie to weigh in on this, but the Town should check with Town Counsel as well.

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#### Article 8. Off-Street Parking and Loading Regulations

- General Comments. This section could be better organized. It should include illustrations/diagrams, and the numbering system needs to be reworked to include sequential numbers and not sometimes numbers and letters (example 8.07a and 8.07b), as often happens elsewhere in the ZBL, too. In addition, the Table could be rewritten to have far fewer words and to be more easily readable.
- Table of Off-Street Parking Regulations and Table of Uses (Article 5). What uses, if any, are missing from the Table of Off-Street Parking Regulations and should be included?
- 8.07. Prohibition of parking in the front setback is problematic (as we heard in the interviews). This may need more review and discussion.
- 8.07a. “Commercial” should be rewritten as “Business” in the title.
- 8.08. Include the regulations of commercial vehicle parking here in the parking section.
- 8.12a(10). The beginning of title is in a different font than the bylaw font. Is this intentional?

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#### Article 9. Nonconforming Uses, Structures, and Lots

- General Comment. We heard concerns about this section during the interviews, but the comments tended to be somewhat non-specific. We will need to review Article 9 in greater detail with the Building and Planning Departments. At the very least, Article 9 needs to be updated and revisited in light of recent case law.

#### **Article 10. Administration and Enforcement**

- General Comments. The content of Article 10 should be moved to beginning of the ZBL. In addition, there are many long sentences and paragraphs with multiple topics. They should be reorganized into smaller numbered subsections for ease of reading.
- 10.02. We recommend not going into detail about what plans should be submitted. Any changes, additions, deletions desired over time by the staff would require going back to town meeting. Provisions such as this should be in rules and regulations.
- 10.05 duplicates Section 7.08.
- 10.10c. This seems to allow use variances as it mentions uses only, but it does not mention dimensional variances. This section should be rewritten for clarity.
- 10.10e (1)-(4). Much of this language should be removed from the ZBL and placed in ZBA rules and regulations.
- 10.10e (5). This section should have a heading, "Repetitive Petition," and it needs to be revised to add the second requirement of a finding of: "specific and material changes in the conditions upon which the previous unfavorable action was based."
- 10.11. The first paragraphs should have a numbering system assigned to them and the information within should be disaggregated.
- 10.11 b-c. Most of this language consists of procedural and/or plan requirements. It should be moved to the ZBA's rules and regulations.
- 10.12. Variances. This section should be included in section 10.10c (see comments above).
- Illustrations. The illustrations on pages 112 and 113 are barely readable. We also question whether the special permit diagram is accurate.

#### **Article 11. Special Regulations.**

- 11.04. General Comment: some sections of the Floodplain District are decades old. We believe this district needs further updating to reflect current FEMA regulations and possibly other requirements as well. Also, each subsection (a, b, c, d etc.) has an all capital letter heading – a style that is not used in most of the rest of the ZBL. This is another example of a format consistency issue.
- 11.05. Inland Wetland District. We have the same comments as in 11.04 above. In addition, what is the relationship between the regulations of the Inland Wetland District and the Conservation Commission's wetland regulations?
- 11.06, Environmental Design Review. We have several comments:
  - b.1a-i and b.2, b.3, and b.4 are uses that require EDR. They could all be put into a simple table for ease of use by the reader.
  - c.1 or c.2. It is unclear where the long paragraph in the middle of page 124 falls under in the numbering scheme. Its indentation does not clarify that question. The same applies to two smaller paragraphs directly above the long paragraph.

- 11.06c.1. The long paragraph in middle of page 124 is all procedural language. Again, this kind of language can be moved to the ARB's rules and regulations.
- 11.06d. This language is mostly what is required for plan submittal and it should be removed to rules and regulations.
- 11.06e This is mainly procedural language that should be moved to rules and regulations.
- 11.07. The language here identifies several requirements for plan filing, but it is not clear who the plans are filed with and who is acting on them.
- 11.08. Two general comment. First, this is another section with all cap headings, so the format is inconsistent. Second, we wondered how well this section is working to produce affordable housing (a policy issue, we realize).
- 11.09. This should be deleted because it no longer applies.

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**Article 12. Amendment, Validity, Effective Date**

- General Comment. Include the content of this article with the section on Purposes and Authority.

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**Missing Provisions**

We did not find the following provisions in Arlington's ZBL:

- Medical marijuana
- Airbnb
- Solar facilities

## B. SUGGESTED FRAMEWORK FOR REORGANIZATION

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1. Purposes and Authority
  - 1.1. Title
  - 1.2. Purposes
  - 1.3. Authority
  - 1.4. Applicability
  - 1.5. Amendments
  - 1.6. Severability
2. Administration and Enforcement
  - 2.1. Enforcement, Violations, Penalties
  - 2.2. Board of Appeals
  - 2.3. Arlington Redevelopment Board
  - 2.4. Special Permits
  - 2.5. Site Plan Review
    - A. Administrative Site Plan Review (DPCD)
    - B. ARB Site Plan Review (EDR)
3. Establishment of Districts
  - 3.1. Establishment
  - 3.2. Classes of Districts
    - A. Residence Districts
    - B. Business Districts
    - C. Industrial District
    - D. Overlay Districts
  - 3.3. Zoning Map
4. Use Regulations
  - 4.1. General
  - 4.2. Uses Permitted in All Districts
  - 4.3. Prohibited Uses
  - 4.4. Table of Use Regulations
5. Nonconforming Uses and Structures
6. Dimensional Regulations
  - 6.1. General
  - 6.2. Dimensional Standards
  - 6.3. Table of Dimensional and Density Requirements
7. General Regulations
  - 7.1. Off-Street Parking and Loading
  - 7.2. Landscaping
  - 7.3. Lighting
  - 7.4. Signs

- 8. Special Regulations<sup>1</sup>
- 9. Special District Regulations
  - 9.1. Floodplain District
  - 9.2. Open Space District
- 10. Definitions

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<sup>1</sup> Here, for example, is where the town's Affordable Housing regulations would be located. Home Occupations and other uses that are subject to certain conditions or performance standards should be placed here as well.

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## Appendix I: Zoning Audit